

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

JULY 23, 2002

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, July 23, 2002 at 9:00 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 9:00 a.m. by Chairman ARTHUR SLATTERY.

Present: Commissioners ARTHUR SLATTERY, MARTIN SMITH, BARBARA HEATH, PAULINE KAWA, NANCY LeRoy, Executive Director BETH EMMONS and Investigator ANN FLANAGAN.

Motion by Commissioner SLATTERY, seconded by Commissioner SMITH, to approve and accept the minutes of the Commission meeting held on June 25, 2002.

I. APPOINTMENTS

9:00 a.m. - Equivalency Interviews

<u>CANDIDATE</u>	<u>COMMISSIONER</u>	<u>DETERMINATION</u>
BRIAN CONNELLY	SLATTERY	APPROVED

9:15 a.m. – TIMOTHY JACQUES appeared before the Commission with his principal broker, Douglas Embree to discuss Mr. Jacques' previous legal incident as required by the Commission at its meeting of March 19, 2002. After a discussion about Mr. Jacques previous legal incident, Mr. Embree acknowledged that he was aware of Mr. Jacques past legal incident and accepts the responsibility as Mr. Jacques' principal broker.

9:30 a.m. – DAVID ELIASON of Computer Business Training, an accredited NH elective course provider, appeared before the Commission to request reconsideration of the amount of hours approved for his course, #E-316, "Basic E-Mail for Agents". After review and discussion, the Commission decided to increase the course credit hours from 1 ½ hours to 3 hours, on the condition that Mr. Eliason re-submit a new course outline which reduces the amount of time allotted for the very basic e-mail techniques from 45 minutes to no more than 20 minutes, and allot the rest of the time to more advance e-mail techniques which will provide licensees with computer knowledge that will benefit the public. Commissioner IKAWA was opposed to the decision.

10:15 a.m. – JAMES DESTEFANO appeared before the Commission to request a declaratory ruling as to whether it was the intent of RSA 331-A:22-a – Practice by Brokers of Other Jurisdictions and Rea 703 – Conducting Business in New Hampshire with Brokers Licensed in Another Jurisdiction, to only govern brokers of other jurisdictions who are involved in New Hampshire-based transactions and actually step foot in New Hampshire to play an active role in the transaction. Mr. DeStefano also requested a declaratory ruling as to whether the recent changes to RSA 358-A, the Consumer Protection Act (HB 1429/ 2002 Legislative Session) would trigger an automatic liability for a licensee under

RSA 331-A, if the licensee is found in violation of RSA 358-A. As an accredited real estate continuing education core instructor, Mr. Destefano asked the Commission if RSA 358-A, the Consumer Protection Act should be included in the core course outline. After review and discussion, the Commission decided to forward both declaratory ruling requests to Senior Assistant Attorney General Wynn Arnold for a legal opinion. Once the Commission receives an opinion on both requests, the Commission will make a ruling on both requests at a future Commission meeting.

11:00 a.m. – LANE RAICHE appeared before the Commission regarding his original broker's application, which was tabled for further documentation at a Commission meeting held on October 16, 1990, and tabled from the June 25, 2002 Commission meeting until further documentation was received by Mr. Raiche. After Mr. Raiche presented the Commission with the required documentation, and upon review and discussion, the Commission unanimously decided to grant Mr. Raiche his broker's license, upon the receipt of his broker application and licensing fee.

III. DISCUSSION

Attorney Charles A. Donahue, on behalf of Terry O'Connor, requested a withdrawal of Complaint FILE NO. 2001-07-03 NHREC & TERRY O'CONNOR VS A. RANGER CURRAN, JR. After review and discussion, the Commission unanimously accepted Attorney Donahue's request for withdrawal of File No. 2001-07-03, as well as the complaint initiated by the Commission's Investigator in File No. 2001-07-03. The parties to the complaint to be so notified.

IV. OTHER BUSINESS

1. Tuesday, August 20, 2002, was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(1) **File No. 2001-09-01**

Evaluator: Commissioner LeRoy

Determination: No violation, should not be heard.

The above determination was unanimously approved.

3. ORDERS

The following Order was issued by the New Hampshire Real Estate Commission. A copy of the Order is attached and will become part of the official minutes of this meeting.

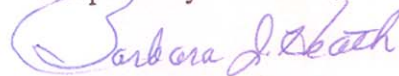
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FILE NO. 2001-02-05 RONALD & GAIL CHARETTE VS WAYNE COUTURE AND LAURIE
CARBONE (WAYNE COUTURE REAL ESTATE)

ADJOURNMENT

Motion by Commissioner LeRoy, seconded by Commissioner HEATH to adjourn the
meeting. Chairman SLATTERY adjourned the meeting at 11:15 a.m.

Respectfully submitted,



BARBARA J. HEATH
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

FILE NO. 2001-02-05

RONALD & GAIL CHARETTE
VS.
WAYNE COUTURE & LAURIE CARBONE
(WAYNE COUTURE REAL ESTATE)

This matter comes before the Real Estate Commission on the complaint of Ronald and Gail Charette, who allege violations of NH RSA 331-A:26, IV, V, VIII, XII, XXVII, XXVIII, XXXVI, and New Hampshire Code of Administrative Rules Rea 701.01 by Wayne Couture and Laurie Carbone. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Wayne Couture (hereinafter referred to as respondent Couture) was licensed as a real estate salesperson on 01 June 1990, and was licensed as a real estate broker on 03 March 1994, and was so licensed and the principal broker for Wayne Couture Real Estate at the time of the alleged violations.

2. Laurie Carbone (hereinafter referred to as respondent Carbone) was licensed as a real estate salesperson on 09 August 1994, and was licensed as a real estate broker on 28 July 1999, and was so licensed as an associate broker for Wayne Couture Real Estate at the time of the alleged violations.

3. Ronald and Gail Charette (hereinafter referred to as complainants) entered into a one-day listing agreement for 11 September 2000, with Wayne Couture Real Estate for their property located at 89 Plaistow Road, Rt. 125, Plaistow, New Hampshire, with Laurie Carbone as the listing agent. The listing price was \$150,000 with a \$5,000 commission to be paid to Wayne Couture Real Estate by complainants.

4. Donald Reis (hereinafter referred to as buyer), an abutter to complainants' property, made a full price offer on 12 September 2000, to purchase complainants' property with a \$1,000 deposit held by Wayne Couture Real Estate escrow account, and an additional \$4,000 deposit due after complainants signed acceptance of the offer.

5. Complainants executed the contract when they signed the offer on 14 September 2000.

6. Both respondents testified that the buyer never made the additional \$4,000 deposit as indicated on the Purchase & Sales Agreement, but neither respondent notified complainants that the buyer was in default of the \$4,000 additional deposit provision.

7. Respondent Carbone testified that respondent Couture had the most contact with the buyer after the Purchase & Sales Agreement was signed and he was aware there was no additional \$4,000 deposit, and that she was made aware of it later on by respondent Couture.

8. Respondent Carbone testified that she then informed complainants' attorney immediately that there was no additional \$4,000 deposit, and that the attorney indicated that he would account for it on the HUD closing statement. However, complainants did not have an attorney. Attorney Cohen, who respondent Carbone contacted, was the attorney for the buyer's lender.

9. Complainants testified that they showed up at the closing originally scheduled for 14 October 2000, but the buyer was not there, and at this point were made aware that the \$4,000 additional deposit was never made and that the buyer wanted an extension.

10. The buyer, Donald Reis, was called as a witness by respondents to testify on their behalf. Mr. Reis testified that he did not make the additional \$4,000 deposit on 14 September 2000 because he wanted complainants to sign an extension of the closing date (signed by Mr. Reis on 13 October 2000 requesting an extension of the closing date from 14 October 2000 to 20 October 2000).

11. Complainants testified that they did not want to sign an extension of the contract with Mr. Reis because they felt he was an untrustworthy individual and they did not want to do business with him, especially since he had contractually promised to pay an additional \$4,000 on 14 September 2000, but they just found out that he had fail to do so.

12. Respondent Couture testified that unnamed attorneys told him that the Purchase & Sales Agreement was still valid even though the buyer had defaulted on the \$4,000 additional deposit, and that complainants could not sell the property to anyone else even after the closing date had passed.

13. Complainants testified that they were afraid to sell their property to anyone else because respondent Couture advised them that they were still contractually obligated to Donald Reis.

14. Complainants testified that they did not know who respondents represented.

15. Respondents indicated that they did not know that they had a listing contract with complainants, and that they thought they were just facilitating the transaction without representing anyone.

16. There was no Agency Disclosure Form to the sellers (complainants) indicating respondents' relationship to the buyer. There was an Agency Disclosure Form

signed by the buyer only indicating that respondents were in dual agency, but the Purchase & Sales Agreement indicated that respondents represent the sellers and were in another relationship with the buyer.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

The Real Estate Commission is concerned about the manner in which respondents conducted themselves during the transaction and in their testimony at this hearing. The Commission expects licensees to be accountable to all parties in a transaction and responsible to the Commission during any hearing.

The Commission takes notice that respondents did not acknowledge their obvious mistakes, but rather chose to present the testimony of their witness, Donald Reis. The Commission found Mr. Reis' testimony to be less than credible. The explanation of why Mr. Reis did not make the additional \$4,000 deposit at the time required by the contract and prior to his need for an extension is not credible to the Commission or acceptable by contract law. Respondent Couture claimed that unnamed attorneys told respondent Couture that the Purchase & Sales Agreement was still valid even though the buyer had defaulted on the \$4,000 additional deposit, and that complainants could not sell the property to anyone else even after the closing date had passed. The Commission has severe doubts that any attorney would make such a misinterpretation of this contractual situation.

The Real Estate Commission finds little that respondents did correctly in this transaction. There is an obvious ignorance regarding contractual matters such as listing contracts and purchase and sales agreement, as well as agency representation and agency disclosure. Regardless of who respondents represented, or who respondents thought they represented, failure to notify complainants about the status of the additional \$4,000 deposit is inexcusable and a violation of the law. Therefore, the Commission rules that both respondents Wayne Couture and Laurie Carbone did violate NH RSA 331-A:26, XII, XXVIII, XXXVI, and New Hampshire Code of Administrative Rules Rea 701.01.

Respondent Wayne Couture as the principal broker who was actively aware of the situations in the transaction, especially with regard to the additional \$4,000 deposit, was responsible for what happened. Therefore, the Commission rules that respondent Wayne Couture did violate NH RSA 331-A:26, XXVII.

Due to a lack of evidence to the contrary, the Commission rules that Wayne Couture and Laurie Carbone did not violate NH RSA 331-A:26, IV, V, or VIII.

The Commission hereby Orders that both respondents Wayne Couture and Laurie Carbone show proof of attendance at a New Hampshire Real Estate Commission accredited 40 hour pre-licensing course, and pay a disciplinary fine to the State of New Hampshire General Fund in the amount of \$500.00 per offense for a total of \$2,000.00


for Laurie Carbone, and a total of 2,500.00 for Wayne Couture, within six (6) months of the date of this Order.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

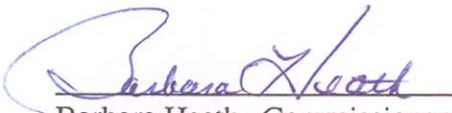
Commissioner Slattery evaluated this case and did not take part in the hearing or decision.


Martin Smith, Commissioner

7/23/02
DATE


Pauline Ikawa, Commissioner

7/23/02
DATE


Barbara Heath, Commissioner

7/23/02
DATE